



Testimony of the National Congress of American Indians  
on HR 5155, the Native American Sacred Lands Act  
House Committee on Resources  
September 25, 2002

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Good morning Chairman Hansen, Representative Rahall, and distinguished Committee Members. My name is Jefferson Keel, and I serve as the Muskogee Area Vice President of the National Congress of American Indians (NCAI) and the First Lieutenant Governor of the Chickasaw Nation. On behalf of the National Congress of American Indians (NCAI) and its more than 250 member tribal nations, I am pleased for this opportunity to present testimony on sacred lands protection. This is perhaps one of the most significant challenges our people face in maintaining our religious and cultural roots to share with future generations.

Imagine holding worship service in a church that is designated by law to be open at all times to the public—hikers, picnickers, and tourists. Imagine rock climbers scaling the walls of the National Cathedral during religious services. Imagine a place of worship in your hometown being replaced by an open pit mine against the will of the congregation. Imagine plans moving forward to level the Wailing Wall to build a highway through Jerusalem. Most people in the U.S. take for granted the sanctity of worship sites. For many Native Americans, however, protection for their sacred areas is uncertain at best.

As the oldest and largest national organization of American Indian and Alaska Native tribal governments, NCAI is deeply concerned with the respectful treatment and protection of sacred lands. Historically subjected to the devastating, systemic destruction of their religious practices and sites, tribes continue to suffer the heartbreaking loss and destruction of their precious few remaining sacred lands today.

There are many places across America that are holy to native people. These sacred places are critical to the revitalization and continuity of hundreds of living cultures. Individuals and organizations that have been active in the movement to protect sacred lands are as diverse as the sites and the communities who tend them.

Every year sacred sites, integral to the practice of Indian religions, are being destroyed. There is no comprehensive, effective policy to preserve and protect sacred lands and resources. Legal remedies, such as the American Indian Religious Freedom Act, Executive order 13007, and the National Historic Preservation Act (NHPA) are often ineffectively implemented and provide limited legal redress to aggrieved traditional religious practitioners and tribes.

Through NCAI meetings and conferences, it has become apparent that sacred places continue to be endangered throughout the nation, and comprehensive legislation is still very much needed to protect all Native American sacred places. Tribal leaders have reached a consensus that it is necessary to begin an organized effort to halt private and governmentally-sponsored development that will threaten or destroy sacred places and have passed several resolutions to this effect.

At NCAI's 2002 June Midyear Conference held in Bismarck, North Dakota, tribal representatives from throughout the nation passed a resolution, BIS-02-043, supporting HR 5155, the Native American Sacred Lands Act, legislation that furthers the protection of sacred lands and sacred places and translates into positive law Executive Order 13007.

This resolution specifically calls for strengthening administrative policies and regulations to better protect sacred sites and accommodate the ceremonial use of such sites, and for the federal government to ensure adequate government-to-government consultation with tribes regarding sacred places.

HR 5155 meets those needs outlined in the resolution by requiring departments and agencies that manage Federal lands to accommodate access and use by Indian religious practitioners and consult with Indian tribes prior to taking significant actions or developing policies affecting Native American sacred lands.

HR 5155 also recognizes the importance of prohibiting undertakings likely to cause significant damage to Indian sacred lands by allowing tribes to petition to withdraw sensitive and invaluable lands for sacred and ceremonial use. The ability to petition for withdrawal of lands is most certainly part of the solution to protecting sacred places.

HR 5155 also helps protect our sacred landscapes by seeking to maintain the confidentiality of sensitive information related to traditional cultural practice, religion, or the significance and location of sacred land.

NCAI has passed several resolutions relating to sacred sites protection, and is working to protect specific sacred places that are currently threatened. These places include Zuni Salt Lake in New Mexico, the Quechan Indian Pass in California<sup>1</sup>, the Black Creek Native American Site in New Jersey<sup>2</sup>, the Dził Nchaa Si' An (Mount Graham) in Arizona<sup>3</sup>, and Snoqualmie Falls In Washington State.

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<sup>1</sup> RESOLUTION #SPO-01-162, Sacred Lands Protection, including Zuni Salt Lake and Quechan Pass.

<sup>2</sup> RESOLUTION #SPO-01-111, To Support the Protection of the Black Creek Native American Site.

<sup>3</sup> RESOLUTION #SPO-01-063, Resolution in Support of the Determination of Eligibility of *Dził Nchaa Si' An* (Mount Graham, AZ) for Listing in the National Register of Historic Places in the United States as a Western Apache Traditional Cultural Property and Sacred Site, and Request That No University or Other Entity, Foreign or Domestic, Join the Mt. Graham Observatory Due to the Harms Caused to Western Apache People, Their Culture, and Their Religion.

### Zuni Salt Lake

The Zuni Salt Lake is an important deity revered by many tribes in the Southwest, including the Zuni, Acoma, Hopi, Navajo, and Apache Nations. A proposed coal strip mine may shortly be approved through a Life of Mine Permit by the Department of the Interior, Office of Surface mining and Bureau of Land Management. This 18,000-acre mine will irrevocably impact the Zuni Salt Lake, surrounding traditional cultural properties, burial sites, and the Sanctuary Zone deemed eligible for inclusion in the National Register of Historic Places. The New Mexico mine and Minerals Division has already approved the mine, despite numerous hydrological studies demonstrating that the mine could have a serious effect on the survival of the lake itself.

### Quechan Indian Pass

In the wake of a decision-making process that took many years, and in which the Quechan Tribe and other concerned tribes participated in the environmental impact statement and review process under section 106 of the NHPA, the Bureau of Land Management denied permission to operate a heap leach, open pit gold mine that would have destroyed many sacred places at Quechan Indian Pass—but distressingly, the Secretary of the Interior has reversed this decision, paving the way to allow the proposed destruction of Quechan Indian Pass.

### Black Creek Site

The Black Creek Site is an historically and culturally significant Lenape village site, as documented both by previous archaeological studies in the Vernon Township in the State of New Jersey as well as by the studies of current archaeologists and anthropologists working in collaboration with the Nanticoke Lenni-Lenape Indians of New Jersey based on ten years of surface sampling. The Nanticoke Lenni-Lenape Indian have determined that the Black Creek Site is a significant Lenape cultural site and seek site protection through registration as an historic site with the State of New Jersey and the National Register of Historic Places. However, the municipal government of the Vernon Township of New Jersey has initiated activities to destroy or otherwise significantly disturb and damage the Black Creek Site.

### Dzil Nchaa Si'an (Mt. Graham)

Dzil Nchaa Si' An ( Mt. Graham) is a prime example of a needlessly threatened site, where both science and religious freedom would be best served by selecting an alternative observatory site. The mountain landform Dzil Nchaa Si' An is a traditional cultural property of the Western Apache people, a central source of sacred spiritual guidance, and a unique place on earth through which Apache people's prayers travel to the Creator. Dzil Nchaa Si' An is being desecrated and irreversibly harmed by the cutting of ancient forest, construction digging, road building, electrification, and the installation of telescopes and metal buildings sponsored by the University of Arizona and its astronomers.

## **Snoqualmie Falls**

Snoqualmie Falls, Washington, in the Pacific Northwest of the United States, deemed eligible for listing on the Register of Historic Places as a Traditional Cultural Property, has a rich pre-contact history as a meeting place for the great Indian councils from the east and the west. The Snoqualmie Falls is the centerpiece of the Snoqualmie Creation Story, and retains its spiritual connection and significance to tribes in the area to this day. Yet, for the last 100 years, the sacred cycle has been disturbed. Today the Falls are strangled to a trickle. A private corporation with a license from a federal agency diverts much of the Snoqualmie River—a public resource, into electricity producing turbines, interrupting its journey over the vast rock face of the Falls. The corporation currently has plans to divert more water under its application for a new license. Other federal agencies have plans that would further desecrate this site.

While economic development is important, so is the integrity of our constitutional commitment to protecting religious freedom—including the traditional religions that are the oldest and longest-standing religions of this land. Tribal governments know firsthand what it is like to live and govern economically depressed areas with few opportunities for creating a sustainable economy. As tribal leaders, we know and understand the need to create economic opportunities for our people, but not at the unthinkable price of sacrificing our religious beliefs.

I believe many of my colleagues in the business community or in state and local government feel similarly—that their religious beliefs and cultural values are the compass that guides them through their lives, and the choices they make are informed by—and not at odds with—those values. Just because these traditional religions may be different from more mainstream experience of the Holy does not make them less valuable, less irreplaceable, or less subject to protection under the constitution. We are a creative, innovative nation—in each of these cases and in others not mentioned here, I believe that alternative means of economic development, energy generation, and scientific exploration are readily available if we work together and agree on bottom line principles of mutual respect for the religious and cultural freedom of our neighbors.

Recognizing the inadequate solutions available to tribes and traditional practitioners for the protection of sacred lands or places, NCAI has identified several goals that we believe are critical to slowing the devastating tide of destruction and ensuring access to these deeply significant areas. These include the following:

### **1. Strengthened Administrative Policies**

Strengthening administrative policies and regulations that will protect sacred sites and accommodate the ceremonial use of such sites is a priority for tribes and traditional practitioners. Currently, agencies are encouraged to provide accommodations for the use of sacred places by "Native American religious

practitioners." For most tribes this would limit protections for and access to only those locations used or approved by a tribe's recognized religious leader. However, many other locations where traditional sacred activities were practiced, but not by the religious leaders who were in most cases men, also should be recognized as sacred, and similar protections offered (e.g., women's places, young adult 'proving grounds', and healing locations used by all tribal people). The users of such sacred places may not have the status of "practitioners" and so wouldn't be represented.

### **1. Tribal Consultation**

NCAI is deeply concerned with the federal government's failure to ensure adequate government-to-government consultation with tribes regarding sacred places. The concerns of tribes must be sought and considered when facilitating the process of protecting sacred places. The United States must adhere to its trust responsibility to tribal governments and Indian people, and work as an ally in efforts to protect and preserve Native culture and tradition. True consultation on a national level must be achieved.

### **2. Compliance with and Enforcement of Existing Federal Law**

NCAI has identified numerous situations in which existing law simply needs to be enforced to secure the protections intended, underscoring the need for enforcement provisions in existing law and future laws that will protect sacred places. Compliance with existing law by federal agencies is one of the many struggles our tribes are dealing with on a daily basis. Our sacred places seem not to be held in high regard by the federal government, an attitude evidenced by the blatant lack of compliance demonstrated by some federal agencies. NCAI requests an inventory of the federal agency sacred lands protection policies, including consultation policies, and an assessment of how the policies and regulations are applied. NCAI, as a member of the Sacred Lands Protection Coalition, recommends implementation of one sacred lands protection policy for all federal agencies to follow, and with the efforts of the Coalition we are willing to help develop this policy.

### **3. Increased Protection**

Increased protection for all sacred places and lands is essential to traditional practitioners and can be achieved through comprehensive and well-thought legislation that provides a cause of action for tribes who are consistently battling with federal agencies who do not take steps to avoid damage to sacred lands.

### **4. Funding**

Tribes need funds to protect and possibly purchase sacred places wherever possible. There are many sacred lands that are owned by private entities.

Access to sacred places located on private lands can prove to be difficult and funding for the purposes of protection and access to sacred places should be made available to tribes to ensure that the needs of all parties are met in these situations.

### Conclusion

HR 5155 represents an important step toward reversing what may be the greatest failure of our nation's historic promise of respect for religious freedoms. In the recent past, this committee has honorably "walked the talk" of religious tolerance and showed compassion for the Church of Latter Day Saints and their need for protecting land sacred and significant to the practice of their religion. As tribal nations who have practiced traditional religions related to sacred places and sacred lands, we ask for the same protection given to religions that are now practiced on our traditional homelands.

NCAI commends the House Resources Committee and Representative Rahall for introducing HR 5155, and for providing the opportunity for tribes to convey their concerns, suggestions, and recommendations aimed at protecting the traditions, cultural, and sacred places of native peoples. We look forward to working with all of you to ensure that the promise of religious freedom and protection is fulfilled for ALL Americans, including the First Americans.

Thank you for your time, and I welcome any questions or concerns you may have.